92-1496

No. 92-

Supreme Court, U.S.
FILED
MAR 11 1993
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

October Term, 1992

MARGARET OLUWATOYIN OSINOWO,

Petitioner,

against

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

RICHARD E. MISCHEL, P.C.
Attorney for Petitioner
225 Broadway, Suite 2199
New York, New York 10007
(212) 227-7040

RICHARD E. MISCHEL
Of Counsel

QUESTION PRESENTED

1. Whether Petitioner's federally guaranteed right to a meaningful opportunity to present a complete defense was violated by the exclusion at Petitioner's heroin importation trial of evidence establishing motivation to fabricate and bias by Petitioner's principal accusers?

LIST OF PARTIES

The parties to the proceeding below were Petitioner Margaret Oluwatoyin Osinowo and the respondent, United States of America.

TABLE OF CONTENTS

	PAGE
Question Presented	i
List of Parties.	ii
Table of Authorities	iv
Opinion Below.	2
Jurisdiction	3
Constitutional Provisions Involved	3
Statutes Involved.	4
Federal Rule of Evidence Involved	5
Statement of the Case.	6
Reasons For Granting The Writ. .	12
Conclusion	24

APPENDIX

Summary Order of the United States Court of Appeals for the Second Circuit, Filed November 20, 1993	1a

TABLE OF AUTHORITIES

PAGE

FEDERAL CASES

California v Trombetta, 467 U.S. 479 (1984) 23

Chambers v Mississippi, 410 U.S. 284 (1973) 15

Crane v Kentucky, 476 U.S. 683 (1986) 13, 16, 20, 23

Davis v. Alaska, 415 U.S. 308 (1974) 15, 19, 20

Delaware v VanArsdale, 475 U.S. 673 (1986). 20

Layne & Bowler Corp. v Western Well works, 261 U.S. 387 (1923). 13

Rakas v Illinois, 439 U.S. 128 (1978), reh. denied, 439 U.S. 1122 (1979) 12

Rice v Sioux City Cemetery, 349 U.S. 70 (1955). 13

Rosario v Kuhlman, 883 F.2d 918 (2d Cir. 1988) 14

United States v Abel, 469 U.S. 545 (1984) 19

TABLE OF AUTHORITIES CON'T

PAGE

STATE CASES

People v Hudy, 73 N.Y.2d 40, 538 N.Y.S.2d 197, 535 N.E.2d 250 [Ct. App. 1988. 14

People v LeGrande, 176 A.D.2d 351, 352, 574 N.Y.S.2d 780, 782 [2d Dept 1992]. 14-15

FEDERAL STATUTES

21 U.S.C. § 841(a)(1) 2, 4, 6

21 U.S.C. § 846 . . . . . 2, 4, 6

28 U.S.C. § 952 . . . . . 2, 4, 6

28 U.S.C. § 1254. 3

CONSTITUTIONAL PROVISIONS

Fifth Amendment 3

Sixth Amendment 3, 14, 18

Fourteenth Amendment 13

FEDERAL RULES OF EVIDENCE

R. 403 21

R. 801(d)(2)(E) 5

No. 92-

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1992

MARGARET OLUWATOYIN OSINOWO,

Petitioner,

- against -

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner Margaret Oluwatoyin Osinowo respectfully prays that a Writ of Certiorari be issued to review the Order of the United States Court of Appeals for the Second Circuit, filed on November 20, 1992, which affirmed the judgment of the United States District Court, Eastern District of New York (Sifton, J.), entered on March 3, 1992.

OPINION BELOW

The Summary Order of the Court of Appeals will not be officially reported but appears in the Appendix as 1a - 4a. The Court of Appeals in its November 20th Order affirmed the judgment of the United States District Court, Eastern District of New York, convicting Petitioner Margaret Oluwatoyin Osinowo, after a jury trial, of conspiring to possess heroin with intent to distribute, in violation of 21 U.S.C. § 846; importing heroin, in violation of 21 U.S.C. § 952(a); and possessing heroin with intent to distribute, in violation of 21 U.S.C. § 841(a)(1), and sentencing her pursuant to the United States Sentencing Guidelines to 292 months' imprisonment, to be followed by a five year term of supervised release.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254. the Court of Appeals Order sought to be reviewed was filed on November 20, 1992. This Petition for a Writ of Certiorari is filed within the time prescribed by U.S.Sup.Ct. Rule 13, 28 U.S.C.A., as enlarged by Order of Honorable Clarence Thomas, dated February 9, 1993, from February 18, 1993, to March 11, 1993.

CONSTITUTIONAL PROVISIONS INVOLVED

Fifth Amendment:

> "No person shall *** be deprived of life, liberty, or property, without due process of law."

Sixth Amendment:

> "In all criminal prosecutions, the accused shall enjoy the right *** to be confronted with the witnesses against him; [and] to have compulsory process for obtaining witnesses in his favor."

STATUTES INVOLVED

21 U.S.C. § 841.

"(a) Except as authorized by the subchapter, it shall be unlawful for any person knowingly or intentionally -

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance."

21 U.S.C. § 846.

"Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy."

21 U.S.C. § 952.

"(a) It shall be unlawful to import into the customs territory of the United States from any place outside thereof (but within the United States), or to import into the United States from any place outside thereof, any controlled substance in schedule I or II of subchapter I of this chapter, or any narcotic drug in schedule III, IV, or V, of subchapter I of this chapter."

FEDERAL RULE OF EVIDENCE INVOLVED

Rule 801(d)(2)(E):

"(d) A statement is not hearsay if -

***

(2) Admission by party-opponent. The statement is offered against a party and is *** (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy."

STATEMENT OF THE CASE

Petitioner Margaret Oluwatoyin Osinowo was accused by a federal grand jury, sitting in the Eastern District of New York, of conspiring to possess with intent to distribute an amount in excess of one hundred (100) grams of a substance containing heroin, in violation of 21 U.S.C. § 841(a)(1); importing into the United States from a place outside thereof (Nigeria) an amount in excess of one hundred (100) grams of substance containing heroin, in violation of 21 U.S.C. §§ 952(a), 960(a)(1) and 960(b)(2)(A); and possessing with intent to distribute an amount in excess of one hundred (100) grams of a substance containing heroin, in violation of 21 U.S.C. § 841(a)(1) and 841(b)(1)(B)(i).

At trial, the government's proof consisted primarily of the testimony of two former members of the alleged conspiracy,

Ms. Oluwatoyin Lawal and Ms. Rakiya Maisalla, both of whom testified pursuant to generous cooperation agreements which they had entered into with the government after they were arrested and charged with drug related offenses. Indeed their decisions to cooperate came after they had been incarcerated from several months.

According to Ms. Lawal, she met Petitioner for the first time in 1984 when she smuggled heroin into the United States from Nigeria for Petitioner's brother. Though she admitted smuggling heroin into the United States on numerous other unrelated occasions, it was not until 1988 that Ms. Lawal allegedly smuggled heroin for Petitioner. All told, Ms. Lawal claimed to have smuggled heroin for Petitioner on five separate occasions, culminating in Ms. Lawal's arrest in July, 1989, as the result of a "controlled delivery" arranged by special agents of the

United States Customs Service. The controlled delivery was arranged after a Nigerian "drug courier" (Kunle Ojelade) was arrested a day earlier at the airport carrying heroin which was allegedly intended for delivery to Petitioner for distribution in the United States.

Rakiya Maisalla, the second cooperating witness, admitted that she too had smuggled heroin into the United States on several occasions unrelated to this case. According to Ms. Maisalla, she was introduced to Petitioner by Ms. Lawal at the end of 1988, but it was not April, 1989, that she smuggled heroin for Petitioner for the first time. On July 26, 1989, Ms. Maisalla was arrested at JFK airport and found in possession of 2.350 kilos of heroin. She claimed that 1.2 kilos were for Petitioner and that the rest was for her and her friends.

A year after Ms. Lawal's and Ms. Maisalla's arrests, Petitioner was arrested and her home searched. Seized were items which, though otherwise innocuous, were identified by the special agent in charge of the investigation and an expert as being evidence of engaging in heroin transactions. Significantly no drugs were found during the search nor were other items commonly associated with drug trafficking, e.g. weapons, drug paraphernalia, unexplained wealth (money, jewels and the like), found.

The defense was two-fold. First, that Ms. Lawal and Ms. Maisalla had concocted a story implicating Petitioner in a heroin smuggling conspiracy to curry favor with the government to obtain favorable plea agreements for themselves which included reduced sentences. Second, the defense contended that Petitioner, who came to the United States in 1984, was a

legitimate businesswoman. To this end, Petitioner, testifying on her own behalf, stated that in October, 1989, she opened a children's (primarily girls') clothing store, importing goods (dresses) from Europe and Asia. The financing for the store came from Petitioner's husband and her husband's family. Evidence seized from her apartment, which the government contended was evidence of her narcotics transactions, was in fact business records of her overseas orders for children's clothing which she intended to sell at her store in Cedarhurst, Long Island.

After being found guilty, Petitioner, who had no prior contact with the criminal justice system, and who at the time of sentencing was thirty one years old, was married and had a four year old girl, was sentenced pursuant to the Federal Sentencing Guidelines to a term of imprisonment of two hundred and ninety two

months to be followed by five year's supervised release.

On appeal to the United States Court of Appeals for the Second Circuit Petitioner contended, inter alia, that her rights to a fair trial and confrontation were violated by the court's rulings which limited her cross-examination of government witnesses and prevented her from calling witnesses on her behalf.

REASONS FOR GRANTING THE WRIT

A SUBSTANTIAL ISSUE AFFECTING THE FAIR ADMINISTRATION OF CRIMINAL JUSTICE IS PRESENTED AS TO WHETHER PETITIONER WAS AFFORDED THE FULL MEASURE OF HER RIGHT GUARANTEED BY THE CONSTITUTION TO A MEANINGFUL OPPORTUNITY TO PRESENT A COMPLETE DEFENSE WHERE THE DISTIRCT COURT EXCLUDED EVIDENCE ESTABLISHING MOTIVE TO FALSIFY AND BIAS BY PETITIONER'S PRIMARY ACCUSERS.

Within the recent past, this Court has granted petitions for certiroari to review criminal convictions in which questions were presented concerning the fairness of proceedings in which the petitioners were precluded from presenting evidence or cross-examining witnesses because of a strict adherence to rules of procedure and/or evidence. Similiar to these cases, the case at bar presents issues of importance to the fair administrtaion of criminal justice (Rakas v Illinois, 439 U.S. 128, 130 [1978], reh. denied, 439 U.S. 1122 [1979]), which are "beyond the academic or episodic" (Rice v

Sioux City Cemetery, 349 U.S. 70, 74 [1955]), and which are important "to the public as distinguished from" being important to the "particular parties" involved (Layne & Bowler Corp. v Western Well Works, 261 U.S. 387, 393 [1923]; Rice v Sioux City Cemetery, supra, 349 U.S., at p 79). Consequently, certiorari to review the Summary Order of the United States Court of Appeals for the Second Circuit, affirming Petitioner's convictions of conspiracy to possess heroin with intent to distribute, importation of heroin, and possession of heroin with intent to distribute, should in all respects be granted.

In Crane v. Kentucky, 476 U.S. 683, 690 (1986), this Court reaffirmed that,

> "[w]hether rooted directly in the Due Process Clause of the Fourteenth Amendment *** or in the Compulsory Process or Confrontation clauses of the

> Sixth Amendment ***, the Constitution guarantees criminal defendants, 'a meaningful opportunity to present a complete defense.' *** We break no new ground in observing that an essential component of procedural fairness is an opportunity to be heard."

Indeed, relying on this Court's precedents, the Second Circuit in Rosario v Kuhlman, 893 F.2d 918, 924 (2d Cir. 1988) said that,

> "[t]he right to present a defense is one of the 'minimum essentials of a fair trial.' *** It is a right which derives not only from the general fairness requirements of the due process clause of the fourteenth amendment but also, and more directly, from the compulsory process clause of the sixth amendment. It is a right which comprehends more than the right to present the direct testimony of live witnesses, and includes the right under certain circumstances, to place before the jury secondary forms of evidence, such as hearsay or, as here, prior testimony" (see also People v Hudy, 73 N.Y.2d 40, 56-7, 538 N.Y.S.2d 197, 535 N.E.2d 250 [Ct. App. 1988]; People v LeGrande, 176 A.D.2d 351, 352, 574 N.Y.S.2d 780, 782 [2d Dept 1992]).

Thus, in Chambers v Mississippi, 410 U.S. 284 (1973), this Court reversed the defendant's conviction of murdering a police officer on the ground that "the strict application" (id., at p 289) of the Mississippi "party witness" or "voucher" rule and its hearsay rule "prevented him from cross-examining a witness called by the defendant, which witness had confessed but later recanted, or presenting other witnesses in his own behalf who would have discredited the recantation and demonstrated [the recanter's] complicity" (id., at p 294), denied the defendant "a trial in accord with traditional and fundamental standards of due process "(id., at p 302).

The following term, in Davis v. Alaska, 415 U.S. 308 (1974), this Court reversed a burglary conviction, holding that the Confrontation Clause required that a defendant in a criminal case "be allowed

to impeach the credibility of a prosecution witness by cross-examination directed at possible bias deriving from the witness probationary status as juvenile delinquent when such an impeachment would conflict with a State's asserted interest in preserving the confidentiality of juvenile adjudications of delinquency" (id., at p 309).

Finally, in Crane this Court reversed the defendant's murder conviction because he was foreclosed from introducing testimony about "the environment in which the police secured his confession" (476 U.S., at p 691), thereby violating the "meaningful opportunity to present a complete defense'" (476 U.S., at p 690) guaranteed to him by the Constitution.

In the case at bar, Petitioner was foreclosed from introducing evidence to establish that her primary accusers had concocted a story naming her as the head of

a conspiracy to smuggle heroin into the United States. Specifically, the defense sought, but was denied, admission of a letter purportedly written by Ms. Lawal to her husband, in which she admitted that she framed Petitioner and convinced others including Ms. Maisalla, to join in her scheme. Among other things, Ms. Lawal said,

> "Sometime I feel guilty for involving this innocent [Petitioner] as you know that's the only way out for me since I already accept money for Mufu. So I had to put everything on [Petitioner]. I had to convince the other ladies, Rakia [Maisalla] and Emanuel to also tell on her and I threaten them because I know their past and I use the charm for them, too. So they finally agree to do it" (A95-6).

Though Ms. Lawal denied on cross-examination that she had written the letter (T176-7, 357, 358), counsel informed the district court that a handwriting exemplar had been obtained from Ms. Lawal and that

he intended to "lay a foundation through an expert that is her handwriting and she wrote it" (T357). The district court rejected the offer, stating that "I made the ruling. I know the law as well as you. I told you before, this was a relatively remote question on credibility" (T358). When defense counsel objected to the ruling, explaining that, "[i]t goes to her credibility and motive to testify" (T358), the district court responded, "[t]hat's the ruling. You stop it. You can't continue harassing the Court this way. You heard what I said *** you can't keep this up all day" (T359).

Second, and in a similar vein, the defense sought but was denied admission of testimony from two inmates (a Darlyn Brooks and a Ms. Gant) at the Metropolitan Correctional Center in New York City and a unit manager (T354, 355) to establish that Ms. Lawal and Ms. Maisalla were conforming

their manufactured but "inconsistent stories about [Petitioner]" so that "by the time we get to trial we'll get it straight" (T354; 355). The exclusion of this evidence was based on the district court's conclusion that the evidence "[r]emotely goes to their credibility not on any important issue involved in this case" (T354-5).

In United States v Abel, 469 U.S. 45, 50, 52 (1984) a unanimous Court said that,

> "[o]ur decision in Davis v Alaska *** holds that the Confrontation Clause of the Sixth Amendment requires a defendant to have some opportunity to show bias on the part of a prosecution witness.
>
> ***
>
> "Bias is a term used in the 'common law of evidence' to describe the relationship between a party and a witness which might lead the witness to slant, unconsciously or otherwise, his testimony in favor of or against a party. Bias may be induced by a witness' self-interest. Proof of bias is almost always relevant because the jury, as fender of fact and weigher of credibility,

> has historically been entitled to assess all evidence which might bear on the accuracy and truth of a witness' testimony. the 'common law of evidence' allowed the showing of bias by extensive evidence, while requiring the cross-examiner to 'take the answer of the witness' with respect to less favored forms of impeachment" (see also People v Hudy, supra 73 N.Y.2d, at p 56).

More recently, in Delaware v Van Arsdale, 475 U.S. 673, 678-9 (1986), the Court reaffirmed what was said in Davis v. Alaska, supra, 415 U.S., at pp 316-7, that "'the exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination.'"

However, the right to a "meaningful opportunity to present a complete defense" is not absolute (see Crane v Kentucky, supra 476 U.S. at p 690). As the Crane Court notedn,

> "[i]n any given criminal case the trial judge is called upon to make dozens, sometimes hundreds of decisions concerning the

> admissibility of evidence. [T]he Constitution leaves to the judges who must make these decisions 'wide latitude' to exclude evidence that is 'repetitive *** only marginally relevant' or poses an undue risk of 'harassment, prejudice, [or] confusion of the issues'".

On appeal, the Second Circuit affirmed the exclusion of evidence referred to ante at pp. 17-19, concluding that the district court had properly conducted the balancing test required by Rule 403 of the Federal Rules of Evidence (3a). However, a review of the record discloses that during the presentation of the government's case there were a number of instances when the district court made remarks to defense counsel which the Second Circuit stated in its Summary Order "were perhaps somewhat brusque" (3a). The record also discloses that, after the government rested (T351), and defense counsel began his summary of what he intended to present on Petitioner's behalf, the court became increasingly

concerned about the length of the trial which, as it turned out, was approximately three days.

As examples, after learning that defense counsel had not "tried a lot of criminal case in the federal court" (T352), the district court warned counsel that "[t]his case has to end this week under any circumstances" (T353); that "[y]ou are not going to continue to waste the time of the Court" (T353); and that "I want to finish this today" (T360).

It was against this backdrop that the district court told defense counsel that "I don't care what you think, enough is enough" (T352) and ruled that the proffered evidence was inadmissible (T351-9).

In short, Petitioner did not have the benefit of what was her Constitutional guarantee, viz: "'a meaningful opportunity to present a complete defense'" (Crane v

Kentucky, supra 476 U.S., at p 690, quoting California v. Trombetta, 476 U.S. 479, 485 [1984]). Certiorari should be granted to review the fairness of the proceedings that resulted in the conviction of Petitioner, a first-time offender sentenced to 292 months' imprisonment.

CONCLUSION

FOR THE REASONS STATED, THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED.

Dated: New York, New York
March 11, 1993

Respectfully submitted,

RICHARD E. MISCHEL, P.C.
Attorney for Petitioner
225 Broadway
Suite 2199
New York, New York 10007
(212) 227-7040

RICHARD E. MISCHEL, ESQ.
Of Counsel

APPENDIX

APPENDIX A

Summary Order of the United States Court of Appeals for the Second Circuit

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 20th day of November one thousand nine hundred and ninety-two.

Present: HONORABLE J. EDWARD LUMBARD,
HONORABLE WILFRED FEINBERG,
HONORABLE AMALYA L. KEARSE,
Circuit Judges.

(Filed Nov 20 1992 No. 92-1147)

UNITED STATES of AMERICA,
Appellee,

-v.-

MARGARET OLUWATOYIN OSINOWO,
Defendant-Appellant,

Appeal from the United States District Court for the Eastern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Eastern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

Defendant Margaret Oluwatoyin Osinowo appeals from a judgment entered in the United States District Court for the Eastern District of New York, John R. Bartels, *Judge*, following a jury trial convicting her of conspiring to possess heroin with intent to distribute, in violation of 21 U.S.C. § 846; importing heroin, in violation of 21 U.S.C. § 952(a); and possessing heroin with intent to distribute, in violation 21 U.S.C. § 841(a) (1). She was sentenced principally to 292 months' imprisonment, to be followed by a five-year term of supervised release. On appeal, Osinowo contends principally (1) that witnesses against her gave perjured testimony and that the evidence was insufficient to support her conviction, (2) that the district court made erroneous trial rulings and made comments that unfairly prejudiced her defense, and (3) that her sentence was incorrectly enhanced. Finding no merit in any of her contentions, we affirm the judgment.

The record does not support Osinowo's contention that government witnesses committed perjury. Much of the evidence relied on by Osinowo to support this contention does not even contradict the challenged testimony, much less indicate that there was perjury. Osinowo's perjury contention amounts to little more than a challenge to the witnesses' credibility, assessment of which was within the province of the jury and may not be overturned on appeal. *See, e.g., United States v. Roman*, 870 F.2d 65, 71 (2d Cir.), *cert. denied*, 490 U.S. 1109 (1989); *United States v. Stratton*, 779 F.2d 820, 828 (2d Cir. 1985), *cert. denied*, 476 U.S. 1162 (1986); *United States v. LeRoy*, 687 F.2d 610, 616 (2d Cir. 1982), *cert. denied*, 459 U.S. 1174 (1983). In light of the applicable standards of review, *see, e.g., Glasser v. United States*, 315 U.S. 60, 80 (1942) (evidence must be viewed by appellate

court in the light most favorable to the government); *United States v. Roman*, 870 F.2d at 71 (reviewing court must defer to the jury's weighing of the evidence); *United States v. Bagaric*, 706 F.2d 42, 64 (2d Cir.) (appellate court must credit every inference that could have been drawn in the government's favor), *cert. denied*, 464 U.S. 840 (1983), Osinowo's challenge to the sufficiency of the evidence to support her conviction is frivolous.

Osinowo's challenges to the exclusion of evidence she proffered likewise have no merit. The document written by an Assistant United States Attorney describing statements by one of Osinowo's coconspirators was properly excluded as inadmissible hearsay, *see* Fed. R. Evid. 801(d) (2) (E). The court's refusal to allow Osinowo to call two witnesses plainly rested on the court's balancing of its assessment of the probative value of the proposed testimony against questions as to its admissibility and the likelihood that it would unduly prolong the trial; exclusion of the evidence was within the court's discretion. *See* Fed. R. Evid. 403. The document Osinowo proffered as having been written by Lawal was properly excluded for lack of foundation. *See* Fed. R. Evid. 901. Lawal denied having written the document, and Osinowo was unable to make an offer of proof that a handwriting expert would or could testify that it had been written by Lawal.

We find unpersuasive Osinowo's contention that comments of the trial court so disparaged her defense that she was denied a fair trial. While certain remarks were perhaps somewhat brusque, we find no basis for reversal. Some of the comments complained of were made outside the presence of the jury, and in some instances were responses provoked by defense counsel. In any event, a defendant is entitled to a fair trial, as contrasted with a perfect trial, *United States v. Pisani*, 773 F.2d 397, 402 (2d Cir. 1985), and our review of the record persuades us that the court's comments, either singly or viewed as a whole, did not deny Osinowo a fair trial.

Osinowo's challenges to her sentence have no merit and do not require discussion.

We have considered all of Osinowo's contentions on this appeal and have found them to be without merit. The judgment of conviction is affirmed.

s/s: J. EDWARD LUMBARD, U.S.C.J.
J. Edward Lumbard, U.S.C.J.

s/s: WILFRED FEINBERG, U.S.C.J.
Wilfred Feinberg, U.S.C.J.

s/s: AMALYA L. KEARSE, U.S.C.J.
Amalya L. Kearse, U.S.C.J.

N.B. THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND SHOULD NOT BE CITED OR OTHERWISE RELIED UPON IN UNRELATED CASES BEFORE THIS OR ANY OTHER COURT